I understand from the counsel for the respondent here that he concedes to the appellant that the earlier proceedings in this suit have been such that there is now no objection, or any possible bar, to the appellant making any such application, if he sees fit to do so. In my view the difficuty in this case has arisen very largely from the manner in which the matter was presented to the Judge in the Court for first instance.

For my part I would dismiss this appeal and tell the appellant to put his application before the Judge in the form appropriate to the relief he seeks.

There is a cross-appeal by the respondent who maintains that the judgment was right, because the section says that it is competent for the bankrupt to 'maintain any action'. On that it has been argued that the section only applies to suits commenced subsequently to the bankruptcy, and has no application to suits pending at that time. Again I regret that I am unable to accept that argument.

My view of the words 'maintain any action' is that they are wide enough to cover both the bringing or continuing of an action already brought. My view is, therefore, that the cross-appeal also should be dismissed with costs.

Prichard, J.:—I concur.

Gerahty, J.:—I concur.

Appeal dismissed.

(Appellate Civil Jurisdiction)

Thorne, Ag. C. J.

December 9, 1932.

M. R. M. PERIAKARUPPAN CHETTIAR .....**Appellant**

v.

NG CHUAN.....**Respondent**

and

P. R. S. N. SOCKALINGAM CHETTIAR .....**Appellant**

v.

SEW PIK.....**Respondent**

(Selangor Civil Appeals Nos. 29 and 30 of 1932)

(Appeals from Collector of Land Revenue, heard together)

Usurious Loans Enactment, 1919, *Section* 3—*Reduction of interest by Collector of Land Revenue—Practice.*

A rate of interest of 15 per cent. per annum on a charge is not in itself exorbitant, and before a Collector of Land Revenue can reduce the rate of interest he must take evidence and have regard to the terms of Section 3 (ii) of the Usurious Loans Enactment, 1919.

A. J. Bostock-Hill for both Appellants.

Both Respondents in person.

Thorne, Ag. C.J:—This was an application by a chargee for leave to sell the charged premises to recover principal and arrears of interest due under a charge.

The matter was heard by the Collector of Land Revenue on the 30th of August, who took evidence and reduced the interest to 12 per cent.

The chargee preferred an appeal against this order.

The charge (in Civil Appeal 29/32) is dated the 13th day of August 1925, and secures the sum of $4000/ with interest at 15 per cent. On the hearing before the Collector of Land Revenue, the chargor admitted the amount claimed by the chargee to be correct, but asked for six months time within which to pay.

The Collector acted under the provisions of the Usurious Loans Enactment, 1919. The provisions of this Enactment apply to a collector in the exercise of his jurisdiction under the Land Code, and the Collector is, therefore, quite right in considering whether or not the rate of interest reserved by the charge was excessive within the meaning of that Enactment.

Section 3 of that Enactment provides that where, in any proceeding to which this Enactment applies, whether heard *ex parte* or otherwise, the Court has reason to believe

"(a) that the interest is excessive, and

"(b) that the transaction was, as between the parties thereto, substantially unfair."

the Court may exercise certain powers conferred by that section. In the exercise of its jurisdiction under this Section, the Court must have regard to the terms of sub-section (ii) of that section, and to consider whether the rate of interest is reasonable, having regard to the risk incurred as it appeared to the creditor at the date of the loan, the presence or absence of security and its value, the financial condition of the debtor, and the result of any previous transactions of the debtor by way of loan of which the creditor has knowledge, and all circumstances materially affecting the relations of the parties at the time of the loan.

The learned Collector here took no evidence whatever of these matters, and he therefore had not the material before him proper to adjudge the question

The rate of interest may be so high as to be of itself sufficient evidence that the transaction was unfair. But in this instance it is to be noted that the rate of interest reserved by the charge is 15 per cent which is not of itself an exorbitant rate of interest. The order of the Collector therefore reducing the rate of interest was made on insufficient grounds, and I accordingly reverse his order and send the matter back to be re-considered, preferably, by another Collector of the same District, with an order that he may take the evidence necessary to enable him to form an opinion, and to make such order in the light of that evidence as he may deem proper. I award the appellant the costs of the appeal.

Case Remitted.